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California Regional Water Quality Control Board Central Valley Region

Robert Schneider, Chair



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1 June 2006

CERTIFIED MAIL
7005 1820 0006 5759 5963

Mr. Michael F. Brinton
City of Manteca
Department of Public Works
1001 W. Center St.
Manteca, CA 95337

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2006-0508 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES; CITY OF MANTECA WASTEWATER QUALITY CONTROL FACILITY, SAN JOAQUIN COUNTY

Enclosed is a Complaint to assess Mandatory Minimum Penalties pursuant to California Water Code (CWC) section 13385, subdivisions (h) and (i), issued by the Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Regional Water Board), for violations of Waste Discharge Requirements Order No. R5-2004-0028 (NPDES No. CA0081558) by the City of Manteca. The Complaint proposes a mandatory penalty of **\$207,000**.

Pursuant to CWC section 13323, the Discharger may either choose to pay the mandatory penalty and waive a Regional Water Board hearing on the matter or choose to contest the Complaint and proceed to a hearing before the Regional Water Board. If the Discharger chooses to waive the right to a hearing, then a duly authorized person must sign the waiver and submit it to this office, along with a check payable to the "State Water Pollution Cleanup and Abatement Account" in the full amount of the mandatory penalty. Any waiver will not be effective until 30 days from the date of this Complaint to allow other interested persons to comment on this action. If the Regional Water Board does not receive a waiver and a check for the full amount by **3 July 2006**, a hearing will be scheduled at the 3-4 August 2006 Regional Water Board Meeting in Sacramento. Additionally, the Executive Officer may decide to schedule the Complaint for a hearing consistent with CWC section 13323(b). If you intend to proceed to a hearing on this matter, you must submit written comments and evidence to the Regional Water Board by **3 July 2006**.

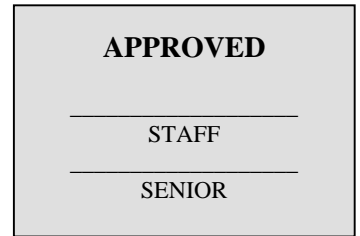
Persons wishing to submit comments on this action should submit written comments within 30 days from the date of this letter to the Regional Water Board, attention: James D. Marshall.



If you have any questions or comments, please contact Mr. Marshall at (916) 464-4772 or jdmarshall@waterboards.ca.gov.

PAMELA C. CREEDON
Executive Officer

Enclosure



cc: Regional Water Board Members, Rancho Cordova
Ms. Kathi Moore, U.S. Environmental Protection Agency, Region IX, San Francisco
Ms. Lisa Brown, CalEPA, Sacramento
Mr. Mark Bradley, State Water Resources Control Board, Sacramento
Ms. Frances McChesney, State Water Resources Control Board, Sacramento
Mr. Phil Isorena, State Water Resources Control Board, Sacramento
Mr. Joe Spano, Department of Health Services, Office of Drinking Water, Stockton
Department of Health Services, Environmental Management Branch, Sacramento
Ms. Carol Oz, Department of Fish & Game, Region II, Rancho Cordova
Delta Protection Commission, Walnut Grove
Department of Environmental Health, San Joaquin County, Stockton
Mr. Eric Parfrey, Sierra Club, Stockton
Mr. Bill Jennings, Watershed Enforcers, Stockton
Mr. Dana Nichols, Stockton Record, Stockton

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2006-0508

MANDATORY PENALTY
IN THE MATTER OF

CITY OF MANTECA
WASTEWATER QUALITY CONTROL FACILITY
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Manteca (hereafter Discharger) based on a finding of violations of Waste Discharge Requirements Order No. R5-2004-0028 (NPDES No. CA0081558), pursuant to California Water Code (CWC) section 13385, subdivision (h), and (i), which authorize the imposition of Administrative Civil Liability, and CWC Section 13323, which authorizes the Executive Officer to issue this Complaint.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Water Board) finds the following:

1. The Discharger owns and operates the City of Manteca Wastewater Quality Control Facility, which provides sewerage service to the City of Manteca. Treated municipal wastewater is discharged to the San Joaquin River, a water of the United States, and part of the Sacramento-San Joaquin Delta.
2. On 19 March 2004, the Regional Water Board adopted WDR Order No. R5-2004-0028 (NPDES No. CA0081558) to regulate discharges of waste from the Wastewater Quality Control Facility. The Regional Water Board subsequently amended Order No. R5-2004-0028 on 5 August 2005 by adopting Resolution No. R5-2005-0110.
3. CWC section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states, "Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation."

CWC section 13385 (h)(2) states, "For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more."

CWC section 13385(i)(1) states, “Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- (A) Violates a waste discharge requirement effluent limitation.
- (B) Fails to file a report pursuant to Section 13260.
- (C) Files an incomplete report pursuant to Section 13260.
- (D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.”

4. CWC Section 13323 states, in part:

”Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.”

5. WDR Order No R5-2004-0028 includes, Effluent Limitations B.2., which states, in part, the following:

Effective 1 April 2004, and through 31 January 2009, the effluent concentrations and mass loadings shall not exceed the following limits:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>1-Hour Average</u>	<u>Daily Maximum</u>
Total Coliform	MPN/100 ml	---	23 ⁴	---	500
Settleable Solids	ml/l	0.1	--	---	0.2
Arsenic	ug/l	10	---	---	---
	lbs/day ³	0.68	---	---	---
Copper	ug/l	7.9	---	---	10.4
	lbs/day ³	0.53	---	---	0.70
Cyanide	ug/l	3.7	---	---	10
	lbs/day ³	0.25	---	---	0.68
Bromodichloromethane	ug/l	5	---	---	8
	lbs/day ³	0.34	---	---	0.54
Dibromochloromethane	ug/l	1.4	---	---	2.8
	lbs/day ³	0.095	---	---	0.19

³ Based upon a design treatment capacity of 8.11 mgd

⁴ Weekly median

6. WDR Order No R5-2004-0028 includes, Effluent Limitations B.5., which states:

"The discharge shall not have a pH less than 6.5 nor greater than 8.0."

7. CWC section 13385(j) provides exceptions to the assessment of mandatory penalties required by CWC section 13385(h) and (i). CWC section 13385(j) states, in part, the following:

"(j) Subdivisions (h) and (i) do not apply to any of the following:

*"(3) A violation of an effluent limitation where the waste discharge is in **compliance** with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or Section 13308..." (emphasis added)*

8. On 19 March 2004, pursuant to CWC section 13301, the Regional Water Board adopted Cease and Desist Order (CDO) No. R5-2004-0029. The Regional Water Board subsequently amended the CDO by Resolution No. R5-2004-0142 on 26 July 2004, and by Resolution No. R5-2006-0006 on 26 January 2006. Pursuant to CWC section 13385(j), while the Discharger is in compliance with the CDO, violations of Effluent Limitations B.1 through B.3 for aluminum, arsenic, copper, cyanide, electrical conductivity, iron, manganese, MBAS, nitrate, and nitrite contained in WDR Order No. R5-2004-0028 are not subject to the assessment of mandatory penalties.
9. From 1 September 2004 through 27 June 2005, the Discharger was out of compliance with the time schedule to assure compliance with Effluent Limitations B.1 through B.3 for arsenic, copper, cyanide, iron, manganese, and MBAS contained in the CDO. While not in compliance with the CDO, the Discharger was subject to the assessment of mandatory penalties for violations of Effluent Limitations B.1 through B.3 for arsenic, copper, cyanide, iron, manganese, and MBAS required by WDR Order No. R5-2004-0028. This Complaint includes the assessment of mandatory penalties for effluent violations for these parameters, which occurred while the Discharger was out of compliance with the CDO.
10. According to monitoring reports submitted by the Discharger through 30 March 2006, the Discharger committed fifty-three (53) serious violations during the period beginning 1 February 2005 and ending on 28 February 2006. The mandatory penalty for these serious violations is **one hundred fifty-nine thousand dollars (\$159,000)**.
11. According to monitoring reports submitted by the Discharger through 30 March 2006, the Discharger also committed sixteen (16) violations of effluent limitations that were not considered serious violations. All sixteen (16) non-serious violations are subject to mandatory penalties under CWC section 13385(i)(2). The

mandatory penalty for these non-serious violations is **forty-eight thousand dollars (\$48,000)**.

12. The total mandatory penalty for serious and non-serious violations is **two hundred seven thousand dollars (\$207,000)**. A detailed list of all violations is included in Attachment A, a part of this Order.
13. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et. seq.), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

THE CITY OF MANTECA IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed a mandatory penalty in the amount of **two hundred seven thousand dollars (\$207,000)**.
2. A hearing shall be held by the Regional Water Board on 3-4 August 2006, unless the Discharger agrees to:
 - a. Waive the hearing and pay the mandatory penalty of **two hundred seven thousand dollars (\$207,000)** in full; or
 - b. Waive the right to a hearing in 90 days, and submit a settlement proposal **within 30 days** of this Complaint that includes an agreement to conduct a supplemental environmental project (SEP) and also includes payment of monetary liability. The Discharger may preserve its right to a hearing pending approval of the settlement proposal.
3. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial liability.

PAMELA C. CREEDON, Executive Officer

1 June 2006

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the City of Manteca (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2006-0508 (hereinafter the "Complaint");
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of \$207,000 by check, which contains a reference to "ACL Complaint No. R5-2006-0508" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement.
7. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A

CITY OF MANTECA

Wastewater Quality Control Facility

RECORD OF VIOLATIONS (1 February 2005 - 28 February 2006) FOR MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. R5-2004-0028)

	<u>Date Occurred</u>	<u>Violation Type</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	02/09/2005	Bromodichloromethane	8 ug/L	9.4 ug/L	Daily	4
2	02/28/2005	Total Arsenic	10 ug/L	14 ug/L	Monthly	2
3	02/28/2005	Total Copper	7.9 ug/L	8.4 ug/L	Monthly	4
4	02/28/2005	Bromodichloromethane	5 ug/L	9.4 ug/L	Monthly	2
5	02/28/2005	Bromodichloromethane	0.34 lbs/day	0.44 lbs/day	Monthly	2
6	02/28/2005	Dibromochloromethane	1.4 ug/L	1.6 ug/L	Monthly	4
7	03/10/2005	Total Copper	10.4 ug/L	13 ug/L	Daily	2
8	03/10/2005	Bromodichloromethane	8 ug/L	14 ug/L	Daily	2
9	03/31/2005	Total Arsenic	10 ug/L	13 ug/L	Monthly	2
10	03/31/2005	Total Copper	7.9 ug/L	13 ug/L	Monthly	2
11	03/31/2005	Bromodichloromethane	5 ug/L	14 ug/L	Monthly	2
12	03/31/2005	Dibromochloromethane	1.4 ug/L	2.5 ug/L	Monthly	2
13	03/31/2005	Total Copper	0.53 lbs/day	0.6 lbs/day	Monthly	4
14	03/31/2005	Bromodichloromethane	0.34 lbs/day	0.65 lbs/day	Monthly	2
15	04/07/2005	Total Copper	10.4 ug/L	12 ug/L	Daily	4
16	04/07/2005	Bromodichloromethane	8 ug/L	14 ug/L	Daily	2
17	04/07/2005	Bromodichloromethane	0.54 lbs/day	0.74 lbs/day	Daily	2
18	04/30/2005	Total Arsenic	10 ug/L	14 ug/L	Monthly	2
19	04/30/2005	Total Copper	7.9 ug/L	12 ug/L	Monthly	2
20	04/30/2005	Bromodichloromethane	5 ug/L	14 ug/L	Monthly	2
21	04/30/2005	Dibromochloromethane	1.4 ug/L	2.6 ug/L	Monthly	2
22	04/30/2005	Total Copper	0.53 lbs/day	0.55 lbs/day	Monthly	4
23	04/30/2005	Bromodichloromethane	0.34 lbs/day	0.64 lbs/day	Monthly	2
24	05/11/2005	Total Copper	10.4 ug/L	12 ug/L	Daily	4
25	05/11/2005	Bromodichloromethane	8 ug/L	16 ug/L	Daily	2

ATTACHMENT A

	<u>Date Occurred</u>	<u>Violation Type</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
26	05/11/2005	Dibromochloromethane	2.8 ug/L	3.5 ug/L	Daily	2
27	05/11/2005	Bromodichloromethane	0.54 lbs/day	0.84 lbs/day	Daily	2
28	05/31/2005	Total Arsenic	10 ug/L	14 ug/L	Monthly	2
29	05/31/2005	Total Copper	7.9 ug/L	12 ug/L	Monthly	2
30	05/31/2005	Total Cyanide	3.7 ug/L	7 ug/L	Monthly	2
31	05/31/2005	Bromodichloromethane	5 ug/L	16 ug/L	Monthly	2
32	05/31/2005	Dibromochloromethane	1.4 ug/L	3.5 ug/L	Monthly	2
33	05/31/2005	Bromodichloromethane	0.34 lbs/day	0.73 lbs/day	Monthly	2
34	05/31/2005	Total Copper	0.53 lbs/day	0.55 lbs/day	Monthly	4
35	05/31/2005	Total Cyanide	0.25 lbs/day	0.32 lbs/day	Monthly	2
36	05/31/2005	Dibromochloromethane	0.095 lbs/day	0.16 lbs/day	Monthly	2
37	06/02/2005	Total Copper	10.4 ug/L	15 ug/L	Daily	2
38	06/02/2005	Bromodichloromethane	8 ug/L	18 ug/L	Daily	2
39	06/02/2005	Total Copper	0.7 lbs/day	0.79 lbs/day	Daily	4
40	06/02/2005	Bromodichloromethane	0.54 lbs/day	0.95 lbs/day	Daily	2
41	06/02/2005	Dibromochloromethane	2.8 ug/L	3.8 ug/L	Daily	2
42	06/30/2005	Bromodichloromethane	0.34 lbs/day	0.81 lbs/day	Daily	2
43	06/30/2005	Dibromochloromethane	0.095 lbs/day	0.17 lbs/day	Daily	2
44	06/30/2005	Bromodichloromethane	5 ug/L	18 ug/L	Monthly	2
45	06/30/2005	Dibromochloromethane	1.4 ug/L	3.8 ug/L	Monthly	2
46	07/13/2005	Bromodichloromethane	8 ug/L	19 ug/L	Daily	2
47	07/13/2005	Bromodichloromethane	0.54 lbs/day	0.95 lbs/day	Daily	2
48	07/13/2005	Dibromochloromethane	2.8 ug/L	3.6 ug/L	Daily	2
49	07/31/2005	Total Coliform	500 MPN	900 MPN	Daily	2
50	07/31/2005	Bromodichloromethane	5 ug/L	19 ug/L	Monthly	2
51	07/31/2005	Bromodichloromethane	0.34 lbs/day	0.86 lbs/day	Monthly	2
52	07/31/2005	Dibromochloromethane	1.4 ug/L	3.6 ug/L	Monthly	2
53	07/31/2005	Dibromochloromethane	0.095 lbs/day	0.16 lbs/day	Monthly	2
54	08/04/2005	Bromodichloromethane	8 ug/L	9.4 ug/L	Daily	4
55	09/21/2005	Total Copper	16 ug/L	15 ug/L	Daily	4
56	10/07/2005	pH	8	8.4	Daily	4

ATTACHMENT A

	<u>Date Occurred</u>	<u>Violation Type</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
57	10/07/2005	pH	6.5	6.4	Daily	4
58	11/17/2005	Total Coliform	500 MPN	1600 MPN	Daily	2
59	11/30/2005	pH	8	8.5	Daily	4
60	11/30/2005	Settleable Solids	0.2 ml/L	0.3 ml/L	Daily	1
61	12/15/2005	pH	8	9.3	Daily	4
62	02/03/2006	Total Coliform	23 MPN	30 MPN	7-day Median	2
63	02/04/2006	Total Coliform	23 MPN	30 MPN	7-day Median	2
64	02/05/2006	Total Coliform	23 MPN	50 MPN	7-day Median	2
65	02/06/2006	Total Coliform	23 MPN	50 MPN	7-day Median	2
66	02/07/2006	Total Coliform	23 MPN	30 MPN	7-day Median	2
67	02/13/2006	Settleable Solids	0.2 ml/L	0.4 ml/L	Daily	1
68	02/14/2006	pH	6.5	6.4	Daily	4
69	02/27/2006	Settleable Solids	0.2 ml/L	0.4 ml/L	Daily	1

REMARKS:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group 2 pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a six month period, thus is exempt from mandatory penalties.
4. Non-serious violation subject to mandatory penalties.

VIOLATIONS AS OF: 02/28/2006

Group 1 Serious Violations:	3
Group 2 Serious Violations:	50
Non-Serious Violations Subject to MPs:	16
Non-Serious Violations Exempt from MPs:	0
<u>TOTAL VIOLATIONS SUBJECT TO MPs:</u>	<u>69</u>

Mandatory Penalty = (53 Serious Violations + 16 Non-Serious Violations) x \$3,000 = \$207,000